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15 *Attorneys for Defendant Google LLC*

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 CHASOM BROWN, WILLIAM BYATT,
20 JEREMY DAVIS, CHRISTOPHER
21 CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
22 situated,

23 Plaintiffs,

24 v.

25 GOOGLE LLC,
26 Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**DEFENDANT GOOGLE LLC'S
ADMINISTRATIVE MOTION TO SEAL
THE COURTROOM FOR HEARING ON
JOINT SUBMISSION (DKT. 281)**

Referral: Hon. Susan van Keulen, USMJ
Hearing Date: September 30, 2021
Hearing Time: 9:30 A.M.

1 **I. INTRODUCTION**

2 Plaintiffs have confirmed that they will reference or discuss Google protected materials at
 3 the September 30, 2021 hearing related to the parties' Joint Submission In Response to Dkt. 242 Re:
 4 Status of Discovery Disputes ("Joint Submission") (Dkt. 281). The parties submitted their Joint
 5 Submission (Dkt. 281) on September 24, 2021, which Google filed under seal and is still pending
 6 before the Court (Dkt. 280). Pursuant to Your Honor's August 12, 2021 Discovery Order (Dkt. 242),
 7 the parties also each identified two issues for resolution at the September 30 conference. Plaintiffs
 8 identified P12 (Google's production of non -custodial documents) and P19 (Google's privilege
 9 assertions). Google identified D7 (Plaintiffs' counsel's improper review and use of Google's
 10 privileged documents) and D9 (Plaintiffs' blanket refusal to answer Google's RFA Nos. 30, 32, and
 11 34) as their priority issues to be discussed at the September 30, 2021 hearing. Dkt. 281.

12 In accordance with Section 5.2(b) of the Protective Order (Dkt. 81), Plaintiffs informed
 13 Google that they intend to discuss at the September 30, 2021 hearing the documents cited in the
 14 parties' September 24 Joint Submission (Dkt. 281), including nine (9) of Google's documents that
 15 were designated Confidential, i.e., GOOG-CABR-00551305, GOOGCALH-00038022, GOOG-
 16 CABR-00424013, GOOG-BRWN-00181879, GOOGBRWN-00164056, GOOG-BROWN-
 17 00183909, GOOG-BRWN-00183909, GOOG-BRWN-00167899, and GOOG-BRWN-00027227.
 18 This would include discussion of the information Google sought to seal at pages 27, 37, 41, 43, and
 19 44 of the Joint Submission (Dkts. 280, 281). These discussions will contain Google's confidential
 20 and proprietary information regarding highly sensitive features of Google's internal systems and
 21 operations that Google does not share publicly and may be discussed at the September 30, 2021
 22 hearing, including (1) financial projections, (2) Google's internal communications and practices
 23 with regard to Incognito, X-Client-Data Header, and their corresponding proprietary functions, and
 24 (3) the various types of cookies and internal identifiers Google uses internally.

25 The Court previously sealed the April 29, 2021 hearing (Dkt. 143) and portions of the
 26 transcript (Dkt. 174), the June 2, 2021 hearing (Dkt. 183) and portions of the transcript (Dkt. 197),
 27 as well as the August 12, 2021 hearing (Dkt. 238) and the parties' Joint Submission re Sealing
 28

1 portions of the transcript is pending before the Court (Dkt. 260) in this case related to the same or
 2 substantively similar information pursuant to Google's request.

3 In light of the highly confidential material to be discussed at the September 30, 2021 hearing,
 4 Google asked Plaintiffs to stipulate to sealing the hearing pursuant to Civil Local Rules 7-11 and
 5 79-5 and Federal Rule of Civil Procedure 26(c). Tse Decl., ¶ 3. Plaintiffs stated they do not oppose
 6 Google's request. *Id.* Therefore, Google now moves the Court to seal the courtroom for the
 7 September 30, 2021 hearing on the Joint Submission (Dkt. 281).

8 **II. LEGAL STANDARD**

9 The common law right of public access to judicial proceedings is not a constitutional right
 10 and it is "not absolute." *Nixon v. Warner Commc 'ns, Inc.*, 435 U.S. 589, 598 (1978); *Crowe v. Cty.*
 11 *of San Diego*, 210 F. Supp. 2d 1189, 1194 (S.D. Cal. 2002) ("[T]here is no right of access which
 12 attaches to all judicial proceedings." (internal citations omitted)). The right is weakest where, as
 13 here, the proceedings concern a non-dispositive discovery motion; rather than satisfy the more
 14 stringent "compelling reasons" standard, a party seeking to seal materials in these circumstances
 15 must make only a "particularized showing" of "good cause." *Kamakana v. City & County of*
 16 *Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). Such sealing is appropriate when the information
 17 at issue constitutes "competitively sensitive information," such as "confidential research,
 18 development, or commercial information." *France Telecom S.A. v. Marvell Semiconductor Inc.*,
 19 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d
 20 1206, 1211 (9th Cir. 2002) (acknowledging courts' "broad latitude" to "prevent disclosure of
 21 materials for many types of information, including, but not limited to, trade secrets or other
 22 confidential research, development, or commercial information"); *Standard & Poor's Corp. Inc. v.*
 23 *Commodity Exch., Inc.*, 541 F. Supp. 1273, 1275 (S.D.N.Y. 1982) ("[T]he overriding interest to be
 24 found in business confidences . . . require[s] . . . temporary reasonably restricted access to the
 25 Courtroom of members of the public.").

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1 **III. THE HEARING SHOULD BE SEALED BECAUSE PARTIES' ARGUMENTS WILL**
 2 **NECESSARILY INVOLVE DISCLOSURE OF GOOGLE'S HIGHLY SENSITIVE**
 3 **MATERIAL**

4 All facts militate in favor of sealing the September 30, 2021 hearing. The "good cause"
 5 standard that governs the sealing determination in non-dispositive motions is easily met. The parties'
 6 Joint Submission contains detailed discussions on Google's confidential information, including the
 7 highly sensitive features of Google's systems and operations. *See* Dkts. 280, 281. As explained in
 8 Google's pending Administrative Motion to Seal Joint Submission (Dkt. 280), the information
 9 sought to be sealed for this hearing reveals Google's internal strategies, system designs, and business
 10 practices for operating and maintaining many of its important services while complying with its
 11 legal and privacy obligations. *Id.* at 3. Such information is protectable and must be kept confidential
 12 in order to prevent harm to Google's competitive standing. *Id.* Moreover, public disclosure of
 13 Google's confidential information may put Google at an increased risk of cybersecurity threats. *Id.*

14 In particular, Plaintiffs' priority issue, Dispute P12 (Google's production of non -custodial
 15 documents), contains information that Google filed under seal and is still pending before the Court
 16 (Dkt. 280), *i.e.*, GOOG-CABR-00551305, GOOGCALH-00038022, GOOG-CABR-00424013,
 17 GOOG-BRWN-00181879, GOOGBRWN-00164056, GOOG-BROWN-00183909, GOOG-
 18 BRWN-00183909, GOOG-BRWN-00167899, and GOOG-BRWN-00027227. This would include
 19 discussion of the information Google sought to seal at pages 27, 37, 41, 43, and 44 of the Joint
 20 Submission (Dkt. 281). To address the issues Plaintiffs raised with respect to this dispute (as well
 21 as other disputes) and the associated documents, Google will need to rely on confidential
 22 information regarding highly sensitive features of Google's operations. Specifically, this
 23 information provides details related to financial projections, various types of Google's internal
 24 identifiers and cookies, as well as Google's internal communications and practices with regard to
 25 Incognito, X-Client-Data Header, and their proprietary functions. Such information reveals
 26 Google's internal strategies, system designs, and business practices for operating and maintaining
 27 many of its important services while complying with its legal and privacy obligations.

28 Google must be able to freely refer to this information to fully explain to the Court how its
 financial projections, identifiers, and cookies work as well as Incognito and X-Client-Data Header,

1 in order to contradict Plaintiffs' unsupported positions—without fear of public disclosure of
 2 sensitive Google business information. It would be unfair and prejudicial to force Google's counsel
 3 to choose between providing facts to the Court by relying on this confidential information and
 4 retaining the confidentiality of these highly sensitive facts. If the hearing is not sealed, Google would
 5 have to pick between two evils: revealing its highly confidential information that may harm Google
 6 and put it at a competitive disadvantage, or vigorously arguing—without supporting facts—that
 7 Plaintiffs' blunderbuss discovery demands are burdensome and disproportional.

8 Given the importance and highly sensitive nature of the aforementioned information related
 9 to the parties' discovery disputes, Google believes that sealing the courtroom is the correct and most
 10 effective approach. Indeed, this Court has recently sealed the April 29, 2021, June 2, 2021, and
 11 August 12, 2021 hearings as well as the April 29, 2021 and June 2, 2021 transcripts where the same
 12 or substantively similar information was discussed. The virtual proceedings in this case permit the
 13 attendance of hundreds of interested members of the public, including legal experts and journalists,
 14 and allowing confidential material to be discussed in open court in these circumstances is
 15 tantamount to having it filed publicly on the docket. Google proposes that the Court seal the
 16 September 30, 2021 hearing and that Google will file a motion to seal the September 30, 2021
 17 transcript 7 business days after the hearing to redact any confidential information.

18 Google defers to the Court as to the best method for sealing the September 30, 2021 hearing
 19 in light of the virtual proceedings but proposes that the Court may consider directing the parties to
 20 dial into a private Zoom meeting, instead of a Zoom webinar.

21 **IV. CONCLUSION**

22 For the foregoing reasons, Google respectfully requests that the Court seal the September
 23 30, 2021 hearing on the parties' Joint Submission (Dkt. 281).

24

25 DATED: September 29, 2021

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 26 SULLIVAN, LLP

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